

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

VINCENT NEWMAN,

Plaintiff,

v.

CASE NO. 08-10388
HONORABLE PATRICK J. DUGGAN

J. COATS, RUO LUEBS, and
RUM CHARLES INGRAM,

Defendants.

ORDER DENYING MOTION FOR CERTIFICATE OF APPEALABILITY

At a session of said Court, held in the
U.S. District Courthouse, Eastern District
of Michigan on May 20, 2009.

PRESENT: HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

On January 28, 2008, Plaintiff, a *pro se* prisoner, commenced this civil rights action against Defendants pursuant to 42 U.S.C. § 1983. Defendants subsequently filed a motion to dismiss and/or for summary judgment, which this Court granted in an opinion and order entered on April 30, 2009. On the same date, the Court entered a judgment in favor of Defendants and against Plaintiff. On May 14, 2009, Plaintiff filed a notice of appeal. Plaintiff, who indicates his intent to proceed on appeal without prepayment of fees, also filed a motion for certificate of appealability. Plaintiff, however, has not submitted the documentation necessary to apply to proceed without prepayment of fees.

Under the Antiterrorism and Effective Death Penalty Act of 1996, a certificate of

appealability is required to appeal a judgment in a habeas corpus action brought pursuant to 28 U.S.C. §§ 2254 or 2255. 28 U.S.C. § 2253(c)(1). In habeas corpus proceedings, the petitioner is challenging his or her state or federal conviction and/or sentence. The present action is a civil rights action brought pursuant to § 1983. A certificate of appealability is not required to appeal an order denying relief in a § 1983 case.¹ *Johnson v. CCA-Northeast Ohio Corr. Ctr.*, 21 Fed. App'x 330, 332 (6th Cir. 2001) (unpublished opinion) (citing *Bradshaw v. Story*, 86 F.3d 164, 166 (1996)).

The Court therefore denies Plaintiff's motion for certificate of appealability as unnecessary.

SO ORDERED.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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¹The Prison Litigation Reform Act, however, provides that "an appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a). The Court will determine whether Plaintiff's appeal is taken in good faith, but only once he submits the documentation necessary to apply to proceed without prepayment of fees. (*See* Doc. 36 (notice to Plaintiff of failure to pay the filing fee or submit the documentation necessary to apply to proceed without prepayment of fees).)